



February 9, 2007

## HOUSE BILL No. 1433

DIGEST OF HB 1433 (Updated January 31, 2007 3:20 pm - DI 103)

**Citations Affected:** IC 5-28; IC 6-1.1; noncode.

**Synopsis:** Agricultural enterprise zones. Permits the board of the economic development corporation to designate certain areas as agricultural enterprise zones. Provides exemptions from property taxes for agricultural processing facilities located in the zones. Provides that real and personal property located in a zone may be assessed for payment of property taxes committed to funding or paying bonded indebtedness or certain lease rentals. Prohibits a person from claiming both the incentives provided to enterprise zone businesses and the agricultural enterprise zone property tax exemption. Prohibits a person from claiming the investment deduction for property located in an agricultural enterprise zone.

**Effective:** July 1, 2007.

**Buck, Grubb**

January 16, 2007, read first time and referred to Committee on Small Business and Economic Development.  
February 8, 2007, amended, reported — Do Pass. Recommended to Committee on Ways and Means.

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HB 1433—LS 7309/DI 92+



February 9, 2007

First Regular Session 115th General Assembly (2007)

PRINTING CODE. Amendments: Whenever an existing statute (or a section of the Indiana Constitution) is being amended, the text of the existing provision will appear in this style type, additions will appear in **this style type**, and deletions will appear in ~~this style type~~.

Additions: Whenever a new statutory provision is being enacted (or a new constitutional provision adopted), the text of the new provision will appear in **this style type**. Also, the word **NEW** will appear in that style type in the introductory clause of each SECTION that adds a new provision to the Indiana Code or the Indiana Constitution.

Conflict reconciliation: Text in a statute in *this style type* or ~~this style type~~ reconciles conflicts between statutes enacted by the 2006 Regular Session of the General Assembly.

## HOUSE BILL No. 1433

A BILL FOR AN ACT to amend the Indiana Code concerning taxation.

*Be it enacted by the General Assembly of the State of Indiana:*

1 SECTION 1. IC 5-28-15-3, AS ADDED BY P.L.214-2005,  
2 SECTION 7, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE  
3 JULY 1, 2007]: Sec. 3. (a) As used in this chapter, "zone business"  
4 means an entity that accesses at least one (1) tax credit, deduction, or  
5 exemption incentive available under this chapter, IC 6-1.1-20.8,  
6 IC 6-1.1-45, IC 6-3-3-10, IC 6-3.1-7, or IC 6-3.1-10.

7 (b) **The term does not include a business located in an**  
8 **agricultural enterprise zone established under IC 5-28-28 that**  
9 **receives a property tax exemption under IC 6-1.1-10-44.**

10 SECTION 2. IC 5-28-28 IS ADDED TO THE INDIANA CODE AS  
11 A **NEW** CHAPTER TO READ AS FOLLOWS [EFFECTIVE JULY  
12 1, 2007]:

### Chapter 28. Agricultural Enterprise Zones

14 Sec. 1. As used in this chapter, "agricultural processing facility"  
15 means:

16 (1) the land on which a building or complex of buildings  
17 described in subdivision (2) is situated; and

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(2) a building or complex of buildings that is used, or that is designed and constructed to be used, to:

(A) transform agricultural products into goods that are used for intermediate or final consumption, including goods for nonfood use; or

(B) package, sort, or grade agricultural products.

Sec. 2. As used in this chapter, "development plan" means a written plan that addresses the threshold criteria set forth in section 5 of this chapter and includes all the following:

(1) A map of the proposed agricultural enterprise zone that indicates the geographic boundaries, total area, and present use and general conditions of the land and structures within those boundaries.

(2) Evidence of community support and commitment.

(3) A description of the methods proposed to increase economic opportunity and expansion, facilitate infrastructure improvement, and identify job training opportunities.

(4) A description of current social, economic, and demographic characteristics of the proposed agricultural enterprise zone and improvements in education, health, human services, public safety, and employment that are anticipated if the agricultural enterprise zone is created.

(5) Any other information required by the board.

Sec. 3. As used in this chapter, "zone business" means a business that receives a property tax exemption under IC 6-1.1-10-44.

Sec. 4. The board has the following powers, in addition to other powers under this chapter:

(1) To review and then approve or reject all applications for agricultural enterprise zone designation, according to the criteria for designation set forth in this chapter.

(2) To approve or reject the geographic boundaries and the total area of a proposed agricultural enterprise zone as submitted in the application.

(3) To provide a procedure by which agricultural enterprise zones may be monitored and evaluated on an annual basis.

(4) To modify an agricultural enterprise zone boundary if the board determines that the modification:

(A) is in the best interest of the agricultural enterprise zone; and

(B) meets the threshold criteria set forth in section 5(c) of this chapter and the factors set forth in section 5(d) of this chapter.

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(5) To receive funds from any source and expend the funds for the administration and promotion of the agricultural enterprise zone program.

Sec. 5. (a) After approval by resolution of the municipality's legislative body, the executive of a municipality that is not an included town under IC 36-3-1-7 may submit an application to the board to have an agricultural enterprise zone designated within the municipality. If the application is denied, the executive may submit a new application. The board shall provide application procedures by rule.

(b) A resolution described in subsection (a) must establish the maximum exemption that a taxpayer may receive under IC 6-1.1-10-44.

(c) The board may designate up to ten (10) agricultural enterprise zones. A municipality may not contain more than one (1) agricultural enterprise zone. An agricultural enterprise zone must have a continuous boundary.

(d) The board shall evaluate an agricultural enterprise zone application if the board finds that the proposed zone meets the following threshold criteria:

(1) Either of the following conditions exists in the proposed zone:

(A) At least twenty-five percent (25%) of the households in the proposed zone are below the poverty level, as established by the most recent United States census.

(B) The average rate of unemployment in the proposed zone for the most recent eighteen (18) month period for which data is available is at least one and one-half (1 1/2) times the average statewide rate of unemployment for the same eighteen (18) month period.

(2) The territory of the proposed zone is entirely within the applicant municipality and is suitable for the development of at least one (1) agricultural processing facility.

(3) The municipality contains an enterprise zone established under IC 5-28-15, and an urban enterprise association that meets the requirements of IC 5-28-15-13 has been appointed.

(e) If an applicant municipality meets the threshold criteria set forth in subsection (d), the board shall evaluate the application, arrive at a decision, and either designate an agricultural enterprise zone in the municipality or reject the application based on the following factors:

(1) The level of poverty, unemployment, and general distress

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of the area in comparison with other applicant and nonapplicant municipalities, and whether the need for an agricultural enterprise zone in the municipality exceeds the threshold criteria set forth in subsection (d).

(2) Evidence of support for designation by residents, businesses, and private organizations in the proposed zone and the demonstration of a willingness among zone constituents to participate in zone area revitalization.

(3) Efforts by the applicant municipality to reduce the impediments to development in the zone area where necessary, including the following:

(A) A procedure for streamlining local government regulations and permit procedures.

(B) Crime prevention activities involving zone residents.

(C) A plan for infrastructure improvements capable of supporting increased development activity.

(4) Significant efforts to encourage the reuse of existing zone structures in new development activities to preserve the existing character of the neighborhood, where appropriate.

Sec. 6. An agricultural enterprise zone expires fifteen (15) years after the date the zone is designated by the board.

Sec. 7. The board may not do the following:

(1) Consider an application for agricultural enterprise zone designation that is submitted before January 1, 2008, or after September 30, 2008.

(2) Designate an agricultural enterprise zone before January 1, 2008, or after December 31, 2008.

Sec. 8. (a) A business that substantially reduces or ceases an operation located in Indiana and outside an agricultural enterprise zone (referred to as a "nonzone operation") in order to relocate in an agricultural enterprise zone is disqualified from benefits or incentives available to agricultural enterprise zone businesses. Determinations under this section shall be made by a hearing panel composed of the secretary of commerce or the secretary's designee, the commissioner of the department of state revenue or the commissioner's designee, and the commissioner of the department of local government finance or the commissioner's designee. The panel, following an evidentiary hearing held after the relocation of the business, shall submit a recommended order to the board for its adoption. The recommended order must be based on the following criteria and subsection (b):

(1) A site specific economic activity, including sales, leasing,

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1 service, manufacturing, production, storage of inventory, or  
 2 any activity involving permanent full-time or part-time  
 3 employees shall be considered a business operation.

4 (2) With respect to a nonzone operation, any of the following  
 5 that occurs during the twelve (12) months before the  
 6 completion of the physical relocation of all or part of the  
 7 activity described in subdivision (1) from the nonzone  
 8 operation to the zone, as compared with the twelve (12)  
 9 months before the relocation, shall be considered a substantial  
 10 reduction of operation for purposes of this subsection:

11 (A) A reduction in the average number of full-time or  
 12 part-time employees by the lesser of one hundred (100)  
 13 employees or twenty-five percent (25%) of all employees.

14 (B) A twenty-five percent (25%) reduction in the average  
 15 number of goods manufactured or produced.

16 (C) A twenty-five percent (25%) reduction in the average  
 17 value of services provided.

18 (D) A ten percent (10%) reduction in the average value of  
 19 stored inventory.

20 (E) A twenty-five percent (25%) reduction in the average  
 21 amount of gross income.

22 (b) Notwithstanding subsection (a), a business that would  
 23 otherwise be disqualified under subsection (a) is eligible for  
 24 benefits and incentives available to a zone business if each of the  
 25 following conditions is met:

26 (1) The business relocates its nonzone operation for any of the  
 27 following reasons:

28 (A) The lease on property necessary for the nonzone  
 29 operation has been involuntarily lost through no fault of  
 30 the business.

31 (B) The space available at the location of the nonzone  
 32 operation cannot accommodate planned expansion needed  
 33 by the business.

34 (C) The building for the nonzone operation has been  
 35 certified as uninhabitable by a state or local building  
 36 authority, and the renovation and construction costs at the  
 37 location of the nonzone operation are more than one and  
 38 one-half (1 1/2) times the cost of purchase, renovation, or  
 39 construction of a facility in the zone, as certified by three  
 40 (3) independent estimates.

41 (D) The building for the nonzone operation has been totally  
 42 destroyed through no fault of the business, and the

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renovation and construction costs at the location of the nonzone operation are more than one and one-half (1 1/2) times the cost of purchase, renovation, or construction of a facility in the zone, as certified by three (3) independent estimates.

(E) A planned expansion needed by the business is not feasible at the nonzone location because the renovation and construction costs at the location of the nonzone operation are more than one and one-half (1 1/2) times the cost of purchase, renovation, or construction of a facility in the zone, as certified by three (3) independent estimates.

(2) The business has not terminated or reduced the pension or health insurance obligations payable to employees or former employees of the nonzone operation without the consent of the employees.

(c) The hearing panel shall deliver to the business and to any person who testified before the panel in favor of disqualification of the business a copy of the panel's recommended order. The business and those persons are parties for purposes of this section.

(d) A party that wishes to oppose the board's adoption of the recommended order of the hearing panel shall, not later than ten (10) days after the party's receipt of the recommended order, file written objections with the board. The board shall set the objections for oral argument and give notice to the parties. A party, at its own expense, may cause to be filed with the board a transcript of the oral testimony or any other part of the record of the proceedings. The oral argument must be on the record filed with the board. The board may hear additional evidence or remand the action to the hearing panel with instructions appropriate to the expeditious and proper disposition of the action. The board may adopt the recommendations of the hearing panel, amend or modify the recommendations, or make an order or determination as is proper on the record.

(e) If no objections are filed, the board may adopt the recommended order without oral argument. If the board does not adopt the recommended order, the parties shall be notified and the action shall be set for oral argument as provided in subsection (d).

(f) The final determination made by the board shall be made by a majority of the quorum needed for board meetings.

Sec. 9. The board shall prescribe:

(1) the form of the application for an agricultural enterprise zone designation; and

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(2) the form required to collect information from a zone business under section 10 of this chapter.

**Sec. 10. (a) Before April 1 of each year, a zone business shall report the following to the board:**

(1) The number of employees who are employed in Indiana by the business.

(2) The compensation (including benefits) paid to the employees of the business in Indiana.

(3) The number of employees who are employed in an agricultural enterprise zone by the business.

(4) The number of employees who were employed by the business in the territory of the agricultural enterprise zone before the designation of the agricultural enterprise zone.

(5) The number of employees who were added by the business in the territory of the agricultural enterprise zone following the designation of the agricultural enterprise zone.

(6) The compensation (including benefits) paid to the employees described in subdivision (4).

(7) The compensation (including benefits) paid to the employees described in subdivision (5).

(8) The total Indiana income of the business.

(9) The income of the business derived from sources inside an agricultural enterprise zone.

(10) The value of the:

(A) facility improvements;

(B) equipment and machinery upgrades, repairs, or retrofits; and

(C) other direct business related investments, including training;

made by the business in an agricultural enterprise zone in the preceding calendar year.

(11) The total value of the:

(A) facility improvements;

(B) equipment and machinery upgrades, repairs, or retrofits; and

(C) other direct business related investments, including training;

made by the business in an agricultural enterprise zone since the date of the agricultural enterprise zone designation.

(b) A zone business shall submit to the board income tax returns, assessment records, personal property tax returns, and any other supporting documentation requested by the board. The

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board shall report the failure of a zone business to comply with this section to the department of state revenue.

Sec. 11. The board shall contract with a state university to prepare an annual report to the legislative council on the economic effects of this chapter in each agricultural enterprise zone. The report must be in an electronic format under IC 5-14-6 and must include the following information:

- (1) The number of new jobs created.
- (2) The percentage change in assessed value.
- (3) The average wage of new jobs created.

SECTION 3. IC 6-1.1-10-44 IS ADDED TO THE INDIANA CODE AS A NEW SECTION TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2007]: Sec. 44. (a) Except as otherwise provided in this section, the following taxpayers are entitled to an exemption from property taxation under this article that does not exceed the maximum exemption established under IC 5-28-28-5(b), if the taxpayer qualifies under subsection (b):

- (1) An agricultural processing facility (as defined in IC 5-28-28-1) that is located inside an agricultural enterprise zone.
- (2) The business personal property (as defined in IC 6-1.1-21-2) of an agricultural processing facility described in subdivision (1).

(b) To receive an exemption under subsection (a), a taxpayer must do the following:

- (1) Do either of the following:
  - (A) Invest at least one million dollars (\$1,000,000) in the taxpayer's agricultural processing facility and create at least five (5) new jobs, in the case of an agricultural processing facility that commences operations in an agricultural enterprise zone after the date of the zone's designation.
  - (B) Increase the number of full-time employees working at the taxpayer's agricultural processing facility by at least ten percent (10%) after the date of the agricultural enterprise zone designation, in the case of an agricultural processing facility that commenced operations before the date of the zone's designation.

(2) Be engaged in the business of processing agricultural products at the taxpayer's agricultural processing facility.

(c) A taxpayer is not eligible for an exemption under this section if the taxpayer is delinquent in the payment of an ad valorem

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property tax assessed and imposed under this article.

(d) Notwithstanding subsection (a), the real property and the business personal property of an agricultural processing facility located in an agricultural enterprise zone shall be assessed for the payment of ad valorem property tax levies committed to pay or fund either:

- (1) bonded indebtedness; or
- (2) lease rentals under a lease with an original term of at least five (5) years.

(e) A taxpayer is eligible for an exemption under this section until the department of local government finance, with the assistance of the department of state revenue, determines that the total state and local tax revenue foregone as a result of all exemptions and deductions granted to the taxpayer under the agricultural enterprise zone program reaches ten million dollars (\$10,000,000).

(f) During the last three (3) years that the taxpayer is eligible for an exemption under this section, the exemption shall be reduced by the following percentages:

- (1) Twenty-five percent (25%) for the year that is two (2) years before the final year of designation as an agricultural enterprise zone.
- (2) Fifty percent (50%) for the year that immediately precedes the final year of designation as an agricultural enterprise zone.
- (3) Seventy-five percent (75%) for the final year of designation as an agricultural enterprise zone.

(g) An agricultural processing facility that is located inside an agricultural enterprise zone and that receives an exemption under this section may not receive a tax incentive or benefit provided under the following statutes:

- (1) IC 6-1.1-20.8.
- (2) IC 6-1.1-45.
- (3) IC 6-3-3-10.
- (4) IC 6-3.1-7.
- (5) IC 6-3.1-9.
- (6) IC 6-3.1-10.

(h) An exemption under this section expires when the designation of the agricultural enterprise zone expires.

SECTION 4. IC 6-1.1-11-4 IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2007]: Sec. 4. (a) The exemption application referred to in section 3 of this chapter is not required if the

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exempt property is owned by the United States, the state, an agency of this state, or a political subdivision (as defined in IC 36-1-2-13). However, this subsection applies only when the property is used, and in the case of real property occupied, by the owner.

(b) The exemption application referred to in section 3 of this chapter is not required if the exempt property is a cemetery:

(1) described by IC 6-1.1-2-7; or

(2) maintained by a township executive under IC 23-14-68.

(c) The exemption application referred to in section 3 of this chapter is not required if the exempt property is owned by the bureau of motor vehicles commission established under IC 9-15-1.

(d) The exemption application referred to in section 3 of this chapter is not required if:

(1) the exempt property is:

(A) tangible property used for religious purposes described in IC 6-1.1-10-21; or

(B) tangible property owned by a church or religious society used for educational purposes described in IC 6-1.1-10-16; and

(2) the exemption application referred to in section 3 of this chapter was filed properly at least once after the property was designated for a religious use as described in IC 6-1.1-10-21 or an educational use as described in IC 6-1.1-10-16.

However, if title to any of the real property subject to the exemption changes or any of the tangible property subject to the exemption is used for a nonexempt purpose after the date of the last properly filed exemption application, this subsection does not apply.

**(e) The exemption application referred to in section 3 of this chapter is not required if:**

**(1) the exempt property is:**

**(A) tangible property located in an agricultural enterprise zone designated under IC 5-28-28; and**

**(B) used for the exempt purposes described in IC 6-1.1-10-44; and**

**(2) the exemption application referred to in section 3 of this chapter was filed properly at least once after:**

**(A) the date of the designation of the agricultural enterprise zone; and**

**(B) the date the taxpayer began using the tangible property for the exempt purposes described in IC 6-1.1-10-44.**

**However, this subsection does not apply if title to any of the tangible property subject to the exemption changes or any of the tangible property subject to the exemption is used for a nonexempt**

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1 **purpose after the date of the last properly filed exemption**  
2 **application.**

3 SECTION 5. IC 6-1.1-12.4-4, AS ADDED BY P.L.193-2005,  
4 SECTION 8, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE  
5 JULY 1, 2007]: Sec. 4. A property owner may not receive a deduction  
6 under this chapter with respect to real property or personal property  
7 located in:

8 (1) an allocation area (as defined in IC 6-1.1-21.2-3); or

9 (2) **an agricultural enterprise zone designated under**  
10 **IC 5-28-28.**

11 SECTION 6. [EFFECTIVE JULY 1, 2007] (a) **IC 6-1.1-10-44, as**  
12 **added by this act, applies to assessment dates occurring after**  
13 **February 28, 2008, for property taxes first due and payable after**  
14 **December 31, 2008.**

15 (b) **IC 6-1.1-11-4, as amended by this act, applies to assessment**  
16 **dates occurring after February 28, 2008, for property taxes first**  
17 **due and payable after December 31, 2008.**

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## COMMITTEE REPORT

Mr. Speaker: Your Committee on Small Business and Economic Development, to which was referred House Bill 1433, has had the same under consideration and begs leave to report the same back to the House with the recommendation that said bill be amended as follows:

Page 3, between lines 10 and 11, begin a new paragraph and insert:

**"(b) A resolution described in subsection (a) must establish the maximum exemption that a taxpayer may receive under IC 6-1.1-10-44."**

Page 3, line 11, delete "(b)" and insert "(c)".

Page 3, line 15, delete "(c)" and insert "(d)".

Page 3, line 34, delete "(d)" and insert "(e)".

Page 3, line 35, delete "(c)," and insert "(d),".

Page 4, line 1, delete "(c)." and insert "(d).".

Page 8, line 11, delete "exempt" and insert **"entitled to an exemption"**.

Page 8, line 12, after "article" insert **"that does not exceed the maximum exemption established under IC 5-28-28-5(b),"**.

and when so amended that said bill do pass.

(Reference is to HB 1433 as introduced.)

ORENTLICHER, Chair

Committee Vote: yeas 11, nays 0.

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